

EXHIBIT Q

FILED UNDER SEAL – SUBJECT TO PROTECTIVE ORDER
CONTAINS CONFIDENTIAL MATERIAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APPLERA CORPORATION,)	
MDS INC., and APPLIED BIOSYSTEMS/MDS)	Civil Action No. 00-CV-105
SCIEX,)	
)	
Plaintiffs,)	HON. RODERICK McKELVIE
)	
v.)	MAGISTRATE THYNGE
)	
MICROMASS UK LTD., and MICROMASS,)	
INC.,)	
Defendants.)	
)	

DEFENDANTS' OPENING CLAIM CONSTRUCTION BRIEF

Filed: November 9, 2001

Robert W. Whetzel (#2288)
Chad Shandler (#3796)
RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
(302) 658-6541

James G. Hunter, Jr.
Kenneth G. Schuler
Kevin C. May
LATHAM & WATKINS
Sears Tower, Suite 5800
Chicago, IL 60606
(312) 876-7700

ATTORNEYS FOR DEFENDANTS
MICROMASS UK LTD. AND
MICROMASS, INC.

TA 333

claim requires that “the pressure in said second chamber be[] a very low pressure for operation of said second rod set as a mass filter.” See id. at Claim Element 1(i) (A85); see also id. at Claim Element 14(g) (A86) (“pumping gas from said second chamber to maintain the pressure in said second chamber at a substantially lower pressure than that of the chamber, for effective mass filter operation of said second rod set.”).

Given the plain meaning of the term “second,” the claims of the ‘736 Patent also mandate that the requisite “second vacuum chamber” come next after the first in the vacuum system of the mass spectrometer. As discussed above, Plaintiffs’ statements during the reexamination proceedings mandate that this ordinary meaning of “second vacuum chamber” be applied here. See disc. supra at 13-18. For example, as discussed above, Plaintiffs distinguished French on the grounds that the pressure in its second vacuum chamber was high whereas “[t]he *second chamber of the invention* is at a *very low* pressure.” Reexamination Request (Ex. 10) at 14 (A179). Thus, Plaintiffs relied on the plain meaning of “second vacuum chamber” in distinguishing the prior art. See id.; disc. supra at 13-18.

Further support for this construction is found in the other claim elements. For instance, Claim Element 1(a) requires that the “first and second vacuum chambers [be] separated by a wall.” See ‘736 Patent (Ex. 2) at Claim Element 1(a) (A85). By indicating what element separates the “first” and “second” vacuum chambers, the patent makes clear that the “second” vacuum chamber is the next vacuum chamber after the first. In light of the prosecution history, nothing in the specification suggests a contrary meaning, see id. at passim (A64-A86), and thus the claim term should be given its plain and ordinary meaning – the vacuum chamber next after the first vacuum chamber in the mass spectrometer.